IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 624 of 1988

Date of Decision:27-09-2005

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COMMISSIONER RAJKOT MUNICIPAL CORPORATION - Appellant(s)

Versus

AMRUTLAL GANESHBHAI GOHIL & 7 - Defendant(s)

(for full cause title, see next sheet)

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Coram:
The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant(s):
SHRI BP TANNA, SR. ADVOCATE WITH SHRI G.RAMAKRISHNAN, ADV.

For the Respondent(s):
MS MITA PANCHAL, AGP FOR RESPONDENT-5
SHRI BN KESHWANI FOR RESPONDENT-7, ADV.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal challenges the judgment of Motor Accident Claims Tribunal (Main), Rajkot

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Whether reporters of Local Papers may be allowed to see the Judgment?

District, Rajkot, MAC Case No.251 of 1983, dated March 30, 1988.

2. Shortly stated, tanker of Municipal Corporation, Rajkot, came for supplying water to the residents of Sahakar Society, Street No.5, on June 8, 1983, between 10:45 to 11:00 a.m. Ladies had collected there for taking water. Some children were also standing there. The tanker driver was moving the vehicle forward and backward. While it was being reversed without giving proper sign or signal and blowing horn, deceased was crushed on the left side, rear wheel, and died on the spot. He was a young boy originally studying in Gayatri Vidyalaya, thereafter in Virani Vidyalaya. He had passed 5th standard in second class. His father was a contractor employing masons. Compensation of Rs.1,50,000/- is

claimed.

3. Opponents are State of Gujarat, Municipal Corporation, Rajkot, driver, Insurance Company and Executive Engineer, Central Workshop Division, Ahmedabad. This tanker, bearing registration No.GTP-4637, belonged to State of Gujarat, insured in the name of Executive Engineer, Central Workshop Division with New India Insurance Company Limited, handed over on hire to Municipal Corporation, Rajkot, for supply of water to the people.

4. Municipal Corporation, Rajkot, denies the allegations of claimants in the petition. Other statements made in the case are that this tanker was given on hire to Rajkot Municipal Corporation by the State for supply of water and was in custody of Rajkot Municipal Corporation, the driver was also of

the Corporation, as contended by the claimants. Insurance Company also states that the State of Gujarat had no control over the vehicle, therefore, registered owner had no liability nor the Insurance Company. Accordingly, parties led evidence. Ultimately, Claim Petition has been allowed, Award for Rs.66,000/- from the opponents, jointly and severally with proportionate cost and interest at the rate of 9% p.a. from th date of application till realization has been passed. Feeling aggrieved by and dissatisfied with the Judgment, this Appeal has been filed. It is contended that the truck was owned by State of Gujarat, insured by it with New India Insurance Company, therefore, State is liable to pay the compensation.

5. Similar question has been examined by us in First Appeal No.1062 of 1988 with Cross

Objections No.68 of 2002 - The Commissioner, Rajkot Municipal Corporation v. Godavariben Devchandbhai Kakkad and others, decided on 22.9.2005, and First Appeal No.1104 of 1988 - Morvi Taluka Panchayat v. Vikramsinh Gambhirsinh and others, decided on 22.9.2005, and it has been held that owner of tanker may be State but since it had been given on hire to Municipal Corporation / Panchayat, State cannot be made liable to pay the compensation even if it is owner of the same nor the Insurance Company with which the vehicle is insured since the private carrier is allowed by the owner of the vehicle to be used by another for hire. The Corporation was plying vehicle for supply of water. Vehicle was under the control of Corporation. It was being plied in accordance with its instructions. Driver of the vehicle was also employed by the Corporation. Therefore, in such circumstances,

except for the ownership of vehicle of State, the vehicle was under the direct control of the Corporation, plied by it for supply of water. Consequently, liability is of Corporation for payment of compensation and not of the State of Gujarat nor of the Insurance Company. Therefore, there is no merit in this Appeal and the same is dismissed.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)